U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: NOV 19 2013 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a staffing agency. It seeks to permanently employ the beneficiary in the United States as a nurse supervisor. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The petition is for a Schedule A occupation. A Schedule A occupation is an occupation codified at 20 § C.F.R. 656.5(a) for which the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Permanent Employment Certification (labor certification), from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with a duplicate uncertified ETA Form 9089. *See* 8 C.F.R. §§ 204.5(a)(2) and (l)(3)(i); *see also* 20 C.F.R. § 656.15. The priority date of the petition is the date the petition is properly filed with USCIS. 8 C.F.R. § 204.5(d).

The director's decision denying the petition concluded that the petitioner had not established that the beneficiary met the minimum requirements of a baccalaureate degree or foreign equivalent, and that the petitioner had not established that the beneficiary had gained the qualifying experience to show equivalence to an advanced degree.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

On September 4, 2013, the AAO sent the petitioner a notice of intent to dismiss and request for evidence (NOID/RFE) with a copy to counsel of record. The NOID/RFE stated, in part:

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Beneficiary's Qualifications

The labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: "5 years of experienced as nurse and/or master degree in nuring [sic]."

Part K of the labor certification states that the beneficiary qualifies for the offered position based on her master's equivalent degree issued by the in 1992;[2] experience as a registered nurse with from April 2010 to the date she signed the labor certification on May 15, 2012; and experience as a registered nurse with from 1997 to 2004. No other experience is listed.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

On appeal, you submitted conflicting letters regarding the beneficiary's experience with Pursuant to a letter dated December 28, 2012 from , the beneficiary worked as a basic nurse with the hospital from July 17, 1995 to February 15, 1998. The letter indicates that she started as a nurse in medicine rooms, and switched to the intensive care unit on October 7, 1996.

However, pursuant to a letter dated January 8, 2013, from Head of Human Resources Section, Regional Hospital of the beneficiary began working as a regular full-time employee on May 9, 1994, changed her category to Basic Nurse II on "May 16 or 1197" and resigned on March 16, 1998.

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[2] Pursuant to a credentials evaluation from dated May 8, 2007 in the record, the beneficiary's nursing degree issued by the is equivalent to a U.S.-awarded Bachelor of Science degree in Nursing.

The letters are inconsistent with each other, as they provide different dates and descriptions relating to the beneficiary's employment with [redacted] They are also inconsistent with the beneficiary's representation on the labor certification that she worked as a registered nurse with [redacted] from 1997 to 2004.[3] Further, they are inconsistent with the beneficiary's Form G-325A, signed by the beneficiary on May 15, 2012. On that form, the beneficiary left blank the section requesting information relating to her last occupation abroad. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Please resolve the inconsistencies with independent, objective evidence regarding the beneficiary's prior employment in Panama. Such evidence may include payroll records, tax records and/or paychecks issued by the beneficiary's employers to the beneficiary.[4]

Ability to Pay the Proffered Wage

The petitioner must also demonstrate that it has been able to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). In order to establish ability to pay, the petitioner must submit its annual reports, federal tax returns, or audited financial statements for each year from the June 8, 2012 priority date. *Id.* The beneficiary has not yet obtained lawful permanent residence. The record of proceeding contains your organization's federal tax return for 2011. Accordingly, please submit your organization's annual report, federal tax return or audited financial statements for 2012. Please also submit any IRS Forms W-2 or 1099 issued to the beneficiary by your organization for 2011 and 2012.

In addition, according to USCIS records, your organization has filed multiple Forms I-140 and I-129 on behalf of other beneficiaries. If a petitioner has filed multiple petitions for multiple beneficiaries, the petitioner must establish that it has the ability

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[3] A letter dated April 20, 2012 from [redacted] indicates that the beneficiary worked as a nurse in the infirmary department from June 16, 1998 to July 15, 2004.

[4] Evidence that a petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's decision.

to pay the proffered wages to each beneficiary. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977). *See also* 8 C.F.R. § 204.5(g)(2).

In determining whether the petitioner has established its ability to pay the proffered wage to multiple beneficiaries, USCIS will add together the proffered wages for each beneficiary for each year starting from the priority date of the instant petition, and analyze the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered for the period prior to the priority dates of their respective Form I-140 petitions, after the dates the beneficiaries obtained lawful permanent residence, or after the dates their Form I-140 petitions have been withdrawn, revoked, or denied without a pending appeal. In addition, USCIS will not consider the petitioner's ability to pay additional beneficiaries for each year that the beneficiary of the instant petition was paid the full proffered wage.

Accordingly, please provide the following information for each beneficiary for whom your organization has filed a Form I-140:

- Full name.
- Receipt number and priority date of each petition.
- Exact dates employed by your organization.
- Whether the petition(s) are pending or inactive (meaning that the petition has been withdrawn, the petition has been denied but is not on appeal, or the beneficiary has obtained lawful permanent residence). If a petition is inactive, provide the date that the petition was withdrawn, denied, or that the beneficiary obtained lawful permanent residence.
- The proffered wage listed on the labor certification submitted with each petition.
- The actual wage paid to each beneficiary from the priority date of the instant petition to the present.
- Forms W-2 or 1099 issued to each beneficiary from the priority date of the instant petition to the present.

Please also provide the following information for every H-1B worker you have employed since the priority date of the instant petition:

- Full name.
- Title.
- Exact dates employed by your organization.
- Required H-1B wage and the actual wage paid each year from the priority date of the instant petition to the present.
- Copy of all Forms W-2 issued to each H-1B worker from the priority date of the instant petition to the present.
- The receipt number for each Form I-129, Petition for a Nonimmigrant Worker, and a copy of the associated Labor Condition Application.

Actual Employer

Your organization must establish that it will be the actual employer of the beneficiary. *See* 8 C.F.R. § 204.5(c); 20 C.F.R. § 656.3. The record contains a dated January 1, 2011 between and [5] is a different entity from the petitioner and, therefore, it does not appear that the applies to the petitioner. Please explain how the Agreement applies to the petitioner. Further, please submit all of the attachments to the

In addition, you submitted an Agreement dated June 8, 2012 between your organization and the beneficiary (Agreement).[6] Pursuant to the Agreement, the beneficiary represented that she is a registered nurse in the State of New York, New Jersey, Nevada or California. The record contains the beneficiary's compact license issued by the Texas Board of Nursing, but the record does not contain evidence that the beneficiary was a registered nurse in New York, New Jersey, Nevada or California on the date of the Agreement. Please submit such evidence. Additionally, the Agreement is not signed by you. Please provide a signed copy of the Agreement. Please also submit Addendum A to the Agreement, which details compensation rates.

Schedule A Nurse Requirements

If the Schedule A occupation is a professional nurse, the petitioner must establish that the beneficiary has a Certificate from the a permanent, full and unrestricted license to practice professional nursing in the state of intended employment; or passed the National *See* 20 C.F.R. § 656.5(a)(2). The state of intended employment in the instant case is Utah. The record contains the beneficiary's compact license issued by the Texas Board of Nursing, and this license appears to be a single-state nursing license. *See*

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[5] Pursuant to a Notice of Intent to Deny dated October 23, 2012 (NOID), the director requested a "copy of the contract between the petitioning company and " The director also requested all amendments, addendums and exhibits to the contract. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

[6] Pursuant to the NOID, the director noted that the petitioner is a staffing company and requested a "signed and dated copy of an agreement between the petitioning company and the beneficiary which details all of the terms and conditions of the beneficiary's proposed employment." The director also requested all amendments, addendums and exhibits to the agreement.

https://www.nursys.com/LQC/LQCSearch.aspx (accessed August 23, 2013).[7] The record does not include the beneficiary's certificate, her permanent, full and unrestricted license to practice professional nursing in the state of Utah, or evidence that she passed the Please submit such evidence.

The NOID/RFE allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/RFE would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's NOID/RFE. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Since the petitioner failed to respond to the NOID/RFE, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[7] The allows a nurse licensed in one "home" compact state to practice in a party compact state without seeking an additional nursing license. Utah and Texas are party compact states. However, according to the Texas Board of Nursing's website, a single-state nursing license does not entitle the nurse to practice under multistate privilege in other party states. *See* http://www.bon.texas.gov/olv/faqs-msr.html (accessed August 23, 2013).